

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Date of Communication: Not Applicable  
Person To Contact:

, ID No.  
Telephone Number:

Refer Reply To:  
CC:ITA:B05  
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Date:  
July 30, 2008

### Legend:

Tribe =  
Program M =  
State A =  
State B =  
Dam: =  
River X: =  
Years:  
1 =  
2 =  
3 =  
\$ Amounts:  
\$m =  
\$x =  
\$y =

Dear :

This is in response to your authorized representative's request for private letter rulings on your behalf regarding the proper federal tax treatment of certain payments you (Tribe) make to Tribal members under an elderly assistance program, Program M, more fully described below. Specifically, you have asked whether payments made to Tribal members under this program are includible in the gross incomes of the recipients for federal income tax purposes, and whether the Tribe will have any information reporting requirements under section 6041 of the Internal Revenue Code (Code) or withholding obligations under section 3402(r) of the Code, with respect to such payments. We are pleased to address your concerns.

## FACTS

The Tribe is a federally-recognized Indian tribal government appearing on the list of tribal governments in Rev. Proc. 2002-64, 2002-2 C.B. 717. The Tribe is governed by a Constitution approved by the Secretary of the Interior and amended most recently in 2005.

The Tribe exercises self-governance over its members and its territory, a reservation of approximately 2.3 million acres, located in States A and B. The governing body of the Tribe is the Tribal Council, consisting of 17 elected members – a Chairman, Vice-Chairman and Secretary, and 14 additional Council members. The Chairman, Vice-Chairman and Secretary, and 6 Council members are elected at-large by the voters of the Tribe. The remaining 8 Council members are each elected to serve one of the reservation's 8 Districts.

The Tribal Council has broadly defined powers, including promotion and protection of the health, education, safety, and general welfare of the members of the Tribe; administration of charitable and such other services as may contribute to the social and economic advancement of the Tribe and its members; and the safeguarding and promotion of the peace, safety, morals, and physical and general welfare of members of the Tribe. Consistent with these authorities, the Tribal Council is responsible for administering a wide range of governmental programs including health, education, social services, housing, transportation, economic development and natural resources protection. The Tribe also administers a variety of federally funded programs.

The Tribe raises revenue to fund its operations through various Tribal taxes, Fund receipts (described below), the leasing of Tribal lands for grazing, and limited gaming activities under the Indian Gaming Regulatory Act, 25 U.S.C.S. 2701.

Program M has its origin in the dislocation of large numbers of Tribal members as a consequence of the River X Dam project in Year 1. In Year 1, the federal government permanently flooded approximately 56,000 acres of the reservation's lands in order to build Dam as part of a larger plan to prevent flooding in the downstream states along River X. At the time, Congress provided limited compensation to the Tribe and the Tribal members who lost their land under the project.

In a subsequent reexamination of the impact of the flooding, Congress found that forcing the Tribe to relinquish 56,000 acres of the best land on its reservation destroyed 90% of the reservation's timber, reduced wild game and plant supply by 75% and put 60% of the ranchers of the Tribe out of business. As a result of these findings, the Secretary of the Interior established a committee "to find ways to resolve inequities that burdened the tribes from the flooding." This committee in turn recommended financial

compensation to substitute for or replace the value of the economic base that was taken as the site for the Dam.

In order to replace the value of the economic base that was taken from the Tribe for the Dam project, the federal government established in Year 2 a perpetual recovery fund (the Fund) in the amount of \$m, to address losses to the Tribe. The interest of the Fund is made available to the Secretary of the Interior to make payments to the Tribe for use for educational, social welfare, economic development, and other public programs, subject to the approval of the Secretary. The Fund is directed primarily at addressing losses of the Tribe itself; it did not provide compensation or assistance to individual Tribal members who lost their lands, and per capita payments to Tribal members was not provided for.

Recently, in Year 3, the Tribe instituted Program M, an assistance program for needy elderly tribal members and their families who had been displaced from their lands by reason of the federal River X Dam project. This program seeks to address and redress the economic, financial, housing, social, and other adversities imposed on such individuals as a result of the dislocation from their historic homelands, and to ameliorate the chronic poverty, deprivation, and adversity that those Tribal members who lost their land to the flooding continue to experience.

Under this program, a portion of the interest payments received by the Tribe from the Fund may be used to fund distributions to original landowners or their first generation descendants over the age of 60 who lost their land to the flooding. The Program's benefits are primarily directed at low to moderate income individuals who continue to experience economic, social, and other unaddressed needs. The Program is not intended to compensate individuals for their land losses, and is not a property compensation or recovery fund.

Under the Program, a maximum of \$x may be distributed to any one individual. To date, the Tribe has distributed the maximum benefit to approximately 14 original landowners, and varying lesser amount, generally not exceeding  $\frac{1}{2}$  \$x, to approximately 158 children of deceased original landowners. The average payment to children of deceased original landowners was approximately \$y.

#### RULINGS REQUESTED

The Tribe asks for a ruling that its payments to eligible Tribal members under Program M are within the scope of the "general welfare exclusion," and excludable from the recipients' gross incomes for federal income tax purposes.

The Tribe also asks for rulings that it is not required to report payments made under Program M under section 6041 of the Code, or to withhold any amounts under section 3402(r) of the Code.

## LAW & ANALYSIS

### *Gross Income*

Section 61(a) of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under section 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 1955-1 C.B. 207 (1955).

Although section 61 provides for broad includibility in gross income, the Internal Revenue Service (IRS) has consistently held that payments to individuals, by governmental units under legislatively provided social benefit programs, for promotion of the general welfare, that do not represent compensation for services, are excludable from the recipient's gross income ("general welfare exclusion").

Section 7701(a)(40) defines Indian tribal governments as the governing bodies of Indian tribes, bands, communities, villages, or groups of Indians, and recognizes that these bodies exercise governmental functions. In general, where Indian tribal governments act in such capacity to provide general welfare-type benefits of a kind traditionally provided by federal, state or local governmental bodies, the federal income tax treatment of such benefits is analogous.

Rev. Rul. 98-19, 1998-1 C.B. 840 and Rev. Rul. 76-373, 1976-2 C.B. 16, concern the taxation of relocation payments under Title I of the Housing and Community Development Act of 1974 ("1974 Act"), which has the primary objective of developing viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Rev. Rul. 98-19 holds that relocation payments authorized by the 1974 Act and made by a local government to individuals moving from flood-damaged areas to other residences, are in the nature of 'general welfare' and therefore are not includible in gross income. Similarly, Rev. Rul. 76-373 holds that relocation payments (e.g., for reasonable expenses in moving a person's family or personal property) made to individuals displaced by activities assisted under Title I of the 1974 Act, are in the nature of 'general welfare' and therefore are not includible in gross income. See *also* Rev. Rul. 76-395, 1976-2 C.B. 16.

Rev. Rul. 74-205, 1974-1 C.B. 20, addresses the federal tax treatment of certain replacement housing payments received under a federal Act by individuals displaced from their homes as a result of certain federal housing programs. The ruling holds that the replacement housing payments are excludable from gross income as payments made under legislatively provided social benefit programs for the promotion of general

welfare. See also Rev. Rul. 75-271, 1975-2 C.B. 23 (holding mortgage assistance payments to lower income individuals provided under a governmental housing program designed to assist lower income families in acquiring home ownership were in the nature of general welfare payments, and were excludable from the recipient's gross incomes under the general welfare exclusion).

In the present case, the Tribe is an Indian tribal government exercising governmental functions that is to be treated similarly to a state for numerous federal tax purposes. Because the Tribe provides general welfare-type benefits of a kind traditionally provided by federal, state or local governmental bodies, the federal income tax treatment of such benefits is the same as if provided by the latter.

In the instant case, under Program M, the Tribe's payments are made by a governmental body, from a governmental welfare fund, pursuant to a legislative enactment, are principally directed at moderate-income level households and below, and are reasonably linked with addressing the specific problems and needs arising from the River X Dam project dislocations. We conclude that payments made under Program M are similar to those benefits previously considered by the IRS in the authorities addressed above. As such, these payments are in the nature of general welfare and are thus excludable from the gross income of the recipients for federal income tax purposes.

#### *Reporting and Withholding Obligations*

You also inquired about possible information reporting and withholding requirements for payments made to Tribal members under Program M.

Sections 6041(a) of the Code and 1.6041-1(a)(1)(i) of the Income Tax Regulations (regulations) provide, with exceptions not applicable here, that all persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income, aggregating \$ 600 or more in the taxable year must file an information return.

Section 1.6041-1(a)(2) of the regulations provides, in pertinent part, that the return required by subparagraph (1) of this paragraph shall be made on Forms 1096 and 1099.

Section 1.6041-1(b) of the regulations provides, in pertinent part, that the term "all persons engaged in a trade or business," as used in section 6041(a), includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit.

Section 6041 of the Code requires the reporting of all "compensation...or other fixed or determinable gains, profits, and income." The word "income" as used in section 6041 is

not defined by statute or regulation; however, its appearance in the phrase “fixed or determinable gains, profits, and income” indicates that what is referred to is “gross income,” and not the gross amount paid. Thus, section 6041 requires you to report only those payments of \$600 or more includible in a recipient’s gross income.

In this case, because the payments made to eligible Tribal members under Program M are in the nature of general welfare and are not includible in the recipients’ gross incomes under section 61, the Tribe is not required to report the payments under section 6041.

Section 3402(r) of the Code extends the withholding provisions to certain taxable payments of Indian casino profits. As indicated, the payments affected by Tribe under Program M do not represent per capita payments or distributions of the net revenues of class II or III gaming activities within the contemplation of this provision. Accordingly, the Tribe is not subject to section 3402(r) with respect to payments made under Program M.

## CONCLUSIONS

Based on the facts and information submitted and the representations made, the following rulings are issued respecting the payments you, Tribe, make to Tribal members participating in Program M, as more fully described above:

- (1) such payments are not income to the recipient Tribal members under section 61 of the Code;
- (2) you (Tribe) are not required under section 6041 to report such payments on Forms 1096 or 1099; and
- (3) you (Tribe) do not have a withholding requirement under section 3402(r) with respect to the subject payments.

Final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by adoption of final regulations, to the extent the regulations are inconsistent with any conclusions in this ruling. See section 11.04 of Rev. Proc. 2008-1, 2008-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2008-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

This letter ruling is based on facts and representations provided by you, Tribe, and your authorized representatives, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable

thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, such transactions which are not specifically addressed herein.

Because it could help resolve federal tax issues, a copy of this letter should be maintained with the Tribes' permanent records. You might also wish to advise Tribal members participating in Program M that payments they receive under the program have been determined to be excludible from their gross incomes for federal income tax purposes.

Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,

/s/ William A. Jackson

William A. Jackson  
Branch Chief, Branch 5  
(Income Tax & Accounting)

Enclosures:

Copy of this letter  
Copy for §6110 purposes